

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VALERIE HOLFORD, individually)	
and as Administratrix)	
of the Estate of ERMA HOLFORD,)	
deceased, and)	
VERONICA LANDER,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 03-608-SLR
)	
AVIS RENT A CAR SYSTEM, INC. and)	
GREGORY B. MILLER,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington, this 27th day of February, 2004, upon review of the motion of defendant Avis Rent A Car System, Inc. ("Avis") to dismiss the complaint for failure to state a claim upon which relief can be granted (D.I. 3);

IT IS ORDERED that defendant Avis's motion is **denied without prejudice to renew** for the reasons that follow:

1. Plaintiffs first filed the present action on June 6, 2002 in the Supreme Court of the State of New York for the County of Kings, alleging negligence on the part Avis and defendant Miller. That action was dismissed by the New York court with the understanding that the present action would be refiled in Delaware. The complaint was filed in this court on June 27, 2003. (D.I. 1) Avis filed the present motion to dismiss on

September 15, 2003 (D.I. 3), to which plaintiffs have failed to answer.

2. The present action arises from an automobile collision occurring in Ogletown, Delaware on August 1, 2000. Miller had rented the automobile from Avis, apparently at a location in New York City. Miller was operating the vehicle at the time of the collision, and plaintiffs were passengers in that vehicle. Plaintiff Erma Holford was fatally injured in the collision, and plaintiffs Valerie Holford and Veronic Lander sustained bodily injuries.

3. Count one of the complaint, and counts two through four by reference, asserts that the collision "was caused wholly and solely by the recklessness, carelessness and negligence of the defendants in the ownership [and] operation of the aforesaid motor vehicle." (D.I. 1, ¶ 15)

4. In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the

complaint.” Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

5. The complaint fails to allege any facts which give rise to the inference of actual negligence by Avis. The court can only conclude that plaintiffs’ theory is one of secondary liability by virtue of Avis’s ownership of the automobile.

6. Delaware law provides for joint and several liability for a car rental company which fails to satisfy the statutory requirements with respect to public liability insurance. 21 Del. C. § 6102(a) (2004). The statute further provides that an automobile owner is entitled to dismissal once it has furnished proof that it has complied with the insurance requirements. Id. § 6102(d).

7. Avis has not furnished proof of insurance as required under the statute and, consequently, under Delaware law may be joint and severally liable for the negligence of its co-defendant. Its motion for dismissal, therefore, will be denied at this time. However, the court will entertain a renewed motion for dismissal by Avis upon furnishing of proof consistent with the requirements of § 6102.

8. The court also notes that plaintiffs have failed to file proof of service with respect to defendant Miller after nearly seven months. Therefore, it is further ordered that, on or before **March 28, 2004**, plaintiffs shall show cause why the above-captioned action should not be dismissed as to defendant Miller for failure to timely serve process on said defendant pursuant to Federal Rule of Civil Procedure 4(m), or otherwise prosecute the matter.

Sue L. Robinson
United States District Judge